

August 1, 2012

Frank J. Fekete
Attorney for KCSOS
1300 17th Street, City Center
Bakersfield, CA 93301-4533

Re: Your Request for Advice
Our file No. A-12-084

Dear Mr. Fekete:

This letter responds to your request for advice on behalf of Mr. Hulsizer regarding the lobbying provisions of the Political Reform Act (the “Act”).¹ Please note this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does the Act require Mr. Hulsizer to register as a lobbyist or a lobbying firm where his employment with the Kern County Superintendent of Schools (“KCSOS”) includes direct communication with qualifying officials for the purpose of influencing legislative or administrative action and the portion of his salary that is allocable to such work totals less than \$2,000 in a calendar month and less than \$5,000 in a calendar quarter?

CONCLUSION

Mr. Hulsizer is not required to register as a lobbyist or a lobbying firm, provided that, compensation he has received for preparation work undertaken for the purpose of engaging in direct communication, as discussed below, does not cause the dollar thresholds to be met.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Mr. Hulsizer is employed by KCSOS as the Chief Deputy for Governmental Affairs. His duties include:

- Technical assistance and consultation to the KCSOS senior cabinet and division heads relating to K-12 education fiscal and policy issues (daily). Twice monthly, this includes serving as convener of KCSOS Legislative Policy Committee Meetings.
- Technical assistance and consultation to the 47 Kern County school districts relating to K-12 education fiscal and policy issues (daily).
- Representation of KCSOS at all meetings of the Greater Bakersfield Chamber of Commerce Governmental Review Council (weekly).
- Technical assistance, including written and oral communication presentations on K-12 education fiscal and policy issues at Kern County Business Official Meetings (monthly), Kern County Superintendent Advisory Meetings (monthly), Kern County Curriculum Advisory Meetings (monthly) and Kern County School Trustees Meetings (quarterly).
- Providing direct communication, as needed, on behalf of KCSOS with qualifying officials for the purpose of influencing legislative or administrative action on K-12 fiscal and policy issues.

In January 2012, KCSOS entered into a contract to provide professional services to the California County Superintendents Educational Services Association (CCSESA) to provide services that include:

- Technical assistance and consultation to the CCSESA Business Advisory Steering Committee relating to K-12 budget issues.
- Representation of CCSESA at all meetings of the Education Coalition Budget Technical Committee and Leadership Council.
- Technical assistance, including written and oral communication presentations on the state budget at CCSESA Board of Directors meetings (monthly), CCSESA Legislative Committee meetings (monthly) and CCSESA General Membership meetings (quarterly).
- Providing direct communication, as needed, on behalf of CCSESA with qualifying officials for the purpose of influencing legislative or administrative action on K-12 budget issues.

Mr. Hulsizer serves as lead staff in delivering the services to CCSESA. Mr. Hulsizer's status as a full-time employee of KCSOS remained unchanged after assuming responsibility for delivering services under the CCSESA contract. He receives 100% of his compensation from KCSOS. CCSESA has made no payments to him.

In January of 2012, on the advice of the Political Reform Division of the Secretary of State's Office, Mr. Hulsizer registered as a lobbyist and lobbying firm for purposes of reporting qualifying lobbying activities that potentially might be performed on behalf of both CCSESA and KCSOS.

Mr. Hulsizer has now performed the services described above under the agreement for the first quarter of 2012 (January-March). Mr. Hulsizer and KCSOS have been able to assess the amount of time required to complete each of the identified services, including providing direct communication on behalf of CCSESA and KCSOS with qualifying officials for the purpose of influencing legislative or administrative action on K-12 budget issues. Specifically, it has been determined that less than 10% of Mr. Hulsizer's total time (no more than 4 hours per week in any week) has been spent providing direct communication on behalf of CCSESA and KCSOS, individually or in combination, with qualifying officials for the purpose of influencing legislative or administrative action.

Based on his current monthly salary of \$16,139.63, Mr. Hulsizer has received \$1,614 per month, or \$4,841.89 for the first quarter of 2012, for engaging in direct communication with qualifying officials for the purpose of influencing legislative or administrative action.

ANALYSIS

Lobbyist

The word "lobbying" is a common expression for "influencing legislative or administrative action." The Act defines "influencing legislative or administrative action" as promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies, or analyses. (Section 82032.) A lobbyist is defined in Section 82039 as:

"[A]ny individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action."

Section 82045 defines "payments to influence legislative or administrative action" as follows:

"(a) Direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing or contracting for the services of the lobbyist separately or jointly with other persons;

“(b) Payment in support or assistance of a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

“(c) Payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official;

“(d) Payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official;

“(e) Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elective state official, legislative official or agency official.”

“Compensation” is defined in Regulation 18239(d)(2) as “. . . any economic consideration, other than reimbursement for reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and lodging.”

Regulation 18239(d)(3) defines the term “direct communication” as “. . . appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or through an agent who acts under one’s direct supervision, control or direction.”

When applying the compensation test, an individual or entity must aggregate payments for preparation work *if the work is undertaken for the purpose of engaging in direct communication*. We have previously advised that such work may include research, (including legal research), conducting studies, writing correspondence, developing testimony, attending hearings or meetings and drafting legislation. (*Civetello-Joy* Advice Letter, No. 08-129; *Sutton* Advice Letter, No. I-99-093; *Pessner* Advice Letter No. I-93-268.)

If payment for the work you have described, including preparation work undertaken for the purpose of engaging in direct communication, does not meet the monetary threshold, any compensation allocable to this work is properly excluded from the calculation, and Mr. Hulsizer is not required to file as a lobbyist.

Lobbying Firms

A “lobbying firm” is defined as “any business entity, *including an individual contract lobbyist*, which meets either of the following criteria” under 82038.5(a): (Emphasis added.)

“(1) The business entity receives or becomes entitled to receive any

compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist.

“(2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action.”

Regulation 18238.5 elaborates on this definition:

“(a) A business entity is a lobbying firm pursuant to Government Code Section 82038.5(a)(2) if it receives or becomes entitled to receive at least \$ 5,000 in compensation in any calendar quarter for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity engages in direct communication for the purpose of influencing legislative or administrative action.”

You indicate that the amount of Mr. Hulsizer’s salary allocable to the services he provides for the purpose of influencing legislative or administrative action was \$4, 841.89 during the first quarter of 2012. However, Mr. Hulsizer must examine all his work to determine whether any part of it constitute preparation work undertaken for the purpose of engaging in direct communication as set forth above. If payment for such work would cause the \$5,000 threshold to be met, Mr. Hulsizer is required to file as a lobbying firm.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl